



Excise Tax Advisory

Excise Tax Advisories (ETA) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. ETAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

NUMBER: 019.04.194

CONVERSION DATE: July 1, 1998

This ETA is cancelled effective January 30, 2006.

ENGAGING IN BUSINESS WITHIN THE STATE

Issued July 1, 1966

Is an out-of-state prime contractor for the Atomic Energy Commission maintaining specific facilities in the state doing business and "engaging in business" within the state?

A contractor from another state operated laboratories and performed engineering and testing activities within the state. It had two employees permanently assigned to the Washington facilities to maintain the government owned test equipment, and teams of its employees come to the state and conduct tests.

The Commission held that the taxpayer was doing business and was "engaged in business" in the state and therefore taxable.

The maintenance of test equipment within the state constitutes a business situs which is a sufficient nexus to support the imposition of a business tax. See G. M. C. v The State of Washington, 60 Wn. 2d 862; Field Enterprises v. The State of Washington, 47 Wn. 2d 852.

The business tax is applicable, although the company was not holding itself out to the public as conducting a business. RCW 82.04.150 provides as follows:

"Engaging in business" means commencing, conducting, or continuing in business and also the exercise of corporate or franchise powers as well as liquidating a business when the Liquidators thereof hold themselves out to the public as conducting such business."

Thus, while liquidators who hold themselves out to the public as conducting a business are "engaging in business," there is no indication of a legislative intent that a "holding out to the public" is a prerequisite generally for "engaging in business."

ETBS have been made Excise Tax Advisories, and have retained their old number. Advisories with a 2 (plus three digits) are new advisories, ETBs that have been revised and readopted after review under the Department's regulatory improvement program, or advisories that have been revised and/or readopted.

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Please direct comments to:
Department of Revenue
Legislation & Policy Division
P O Box 47467
Olympia, Washington 98504-7467
(360) 753-4161 eta@DOR.wa.gov